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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. **20**

JOYCE C. THORPE,

Petitioner,

—v.—

HOUSING AUTHORITY OF THE CITY OF DURHAM.

**PETITIONER'S REPLY TO RESPONDENT'S BRIEF
IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

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OCTOBER TERM, 1967

No. 1003

JOYCE C. THORPE,

Petitioner,

—v.—

HOUSING AUTHORITY OF THE CITY OF DUBHAM.

**PETITIONER'S REPLY TO RESPONDENT'S BRIEF
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WRIT OF CERTIORARI**

**Petitioner Did Not Have Any Opportunity to Explore
the Reasons for Her Eviction in the
State Trial Court**

Respondent, in its brief in opposition to the petition for writ of certiorari, again contends that Mrs. Thorpe had an opportunity to explore the reasons for her eviction by the Housing Authority by discovery or through direct or cross-examination of the executive director of the Authority in the Superior Court. Petitioner, in her petition for certiorari, has argued that no such opportunity existed because of the narrow issue involved in the state trial court proceedings. Both the trial court and the North Carolina Supreme Court, in its original opinion, held that the reason for Mrs. Thorpe's eviction was immaterial since the only questions in the summary eviction proceeding were whether the Housing Authority was the owner of

the property and whether petitioner was holding over past the term of her lease after she had been given notice to vacate.

In finding that the reasons for termination were immaterial to this case, the Superior Court and the Supreme Court of North Carolina necessarily precluded any means of determining what those reasons were and of obtaining a hearing on their legal and factual basis. Under North Carolina practice, discovery is not available with respect to issues which are held immaterial to the cause of action. See, e.g., *Flanner v. St. Joseph Home for the Blind Sisters of St. Joseph of Newark*, 227 N.C. 342, 42 S.E.2d 225 (1947); *H. L. Coble Construction Co. v. Housing Authority of the City of Durham*, 244 N.C. 261, 93 S.E.2d 98 (1956).

Even if the reasons for termination could have been obtained through discovery or otherwise, the holdings of the Superior Court and of the Supreme Court would have precluded petitioner from obtaining a hearing on the legal and factual basis for the reasons. Since the reasons were held legally immaterial, any affirmative evidence introduced by the petitioner to challenge the basis for such reasons would, of course, not be admissible. Under North Carolina law, as in most states, the test of admissibility is relevance and materiality of the evidence with relation to the specific issues on which a case is tried. See, e.g., *Gurganus v. Guaranty Bank & Trust Co.*, 246 N.C. 655, 100 S.E.2d 81 (1957); *Culbertson v. Rogers*, 242 N.C. 622, 89 S.E.2d 299 (1955).

Similarly, the Housing Authority officials could not have been cross-examined as to the basis for their reasons. While North Carolina has a broad scope of permissible cross-examination, such examination must minimally relate to "matter relevant to the inquiry." See, e.g., *Smith v. Railroad*, 147 N.C. 603 (1908); *State v. Huskins*, 209

N.C. 727, 184 S.E. 480 (1936). See, also, McCormick, EVIDENCE, 43 (1954). Again, however, the holdings of the Superior Court and of the North Carolina Supreme Court, as a matter of law, found the reasons to be irrelevant to the inquiry.¹ Thus, neither the proceedings as a whole nor any one part of them afforded petitioner the opportunity to build her case or to confront the case of her adversaries on the one crucial issue, the reasons for termination of the lease agreement.

Respectfully submitted,

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¹ If cross-examination is limited to matters relevant to the inquiry, then such an avenue is, of course, precluded as a means of finding out the reasons for termination in the first instance in light of the finding that the reasons are "immaterial." Moreover, even if the reasons could have been elicited in cross-examination, discovery of the reasons at that time—in the middle of the trial itself—would not have afforded constitutionally adequate notice of the nature of the charges against the petitioner.